

APPENDIXS

A-1 Thur A-26 AND 1a, 2a, 3a
4a and 5a Thur 17a

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 18-2720

Prentis Rupert

Plaintiff - Appellant

v.

Marty Boyd, Sheriff, Craighead County Sheriff Department

Defendant

Keith Bowers, Jail Administrator, Craighead County Detention Center (originally named as Bower); Arthur Bentley, Doctor (originally named as Bentley); Kara Black, Head Nurse, Craighead County Detention Center (originally named as Cara Black); Harry Hogan, LPN, Craighead County Detention Center (originally named as H Hogan); P. Motts, Nurse, Craighead County Detention Center

Defendants - Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Jonesboro
(3:17-cv-00061-DPM)

JUDGMENT

Before LOKEN, GRUENDER and BENTON, Circuit Judges.

All appellees are dismissed in this appeal and the appeal is hereby dismissed.

December 28, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

App. A!

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

PRENTIS RUPERT

PLAINTIFF

v.

No. 3:17-cv-61-DPM

KEITH BOWERS, Jail Administrator,
Craighead County Detention Center;
ARTHUR BENTLY, Doctor; KARA
BLACK, Head Nurse, Craighead County
Detention Center; HARRY HOGAN,
LPN, Craighead County Detention Center;
and P. MOTTS, Nurse, Craighead County
Detention Center

DEFENDANTS

ORDER

On *de novo* review, the Court adopts the recommendation, № 59, and overrules Rupert's objections, № 60 & № 63. FED. R. CIV. P. 72(b)(3). The care provided for Rupert's toothache was, at most, negligent; the Defendants have explained why Rupert's Hepatitis C wasn't treated; and Rupert hasn't presented any verifying medical evidence showing that the delay in treatment had any detrimental effect. *Jackson v. Riebold*, 815 F.3d 1114, 1119-20 (8th Cir. 2016). Defendants' motions for summary judgment, № 46 & № 53, are granted. Rupert's claims about treatment for Hepatitis C and a toothache will be dismissed with prejudice.

App. A-3

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

15 May 2018

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

PRENTIS RUPERT

PLAINTIFF

v.

3:17CV00061-DPM-JJV

MARTY BOYD, Sheriff, Craighead
County Sheriff Department; *et al.*

DEFENDANTS

AMENDED AND SUBSTITUTED
PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following partial recommended disposition has been sent to United States District Judge D.P. Marshall Jr. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.

3. The details of any testimony desired to be introduced at the new hearing in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

I. INTRODUCTION

Prentis Rupert (“Plaintiff”), formerly incarcerated at the Craighead County Detention Center, filed this action *pro se* pursuant to 42 U.S.C. § 1983. (Doc. No. 2.) He alleges he was denied medical care for hepatitis C and dental care for a toothache; he also mentions a broken toe and “funny” smelling urine. (*Id.* at 4-5.) Plaintiff seeks monetary damages. (*Id.* at 6.) Defendant Bowers¹ has filed a Motion for Summary Judgment, contending Plaintiff failed to exhaust his administrative remedies before filing this action. (Doc. No. 32.) Defendants Bentley,² Kara Black,³ H. Hogan,⁴ and P. Motts have filed a Motion to Adopt Defendant Bowers’s Motion for

¹ This Defendant’s name is Keith Bowers. (Doc. No. 15 at 1.) The Clerk is directed to amend the docket to reflect his full and correct name.

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⁴ This Defendant’s name is Hannah Hogan. (Doc. No. 17 at 1.) The Clerk is directed to amend the docket to reflect her full name.

Summary Judgment, stating the Motion also applies to Plaintiff's claims against them. (Doc. No. 36.) Plaintiff has submitted a Response and supporting documents (Doc. Nos. 39-41), which I have considered. After careful review, and for the following reasons, I find the Motion to Adopt should be GRANTED and the Motion for Summary Judgment should be GRANTED IN PART and DENIED IN PART. Plaintiff's claims regarding treatment for hepatitis C and a toothache should proceed; his claims regarding treatment for a broken toe and "funny" smelling urine should be dismissed.

II. SUMMARY JUDGMENT STANDARD

Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party asserting that a fact cannot be or is genuinely disputed must support the assertion by citing to particular parts of materials in the record, "including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials[.]" Fed. R. Civ. P. 56(c)(1)(A).

When ruling on a motion for summary judgment, the court must view the evidence in a light most favorable to the nonmoving party. *Naucke v. City of Park Hills*, 284 F.3d 923, 927 (8th Cir. 2002). The nonmoving party may not rely on allegations or denials, but must demonstrate the existence of specific facts that create a genuine issue for trial. *Mann v. Yarnell*, 497 F.3d 822, 825 (8th Cir. 2007). The nonmoving party's allegations must be supported by sufficient probative evidence that would permit a finding in his favor on more than mere speculation, conjecture, or fantasy. *Id.* (citations omitted). A dispute is genuine if the evidence is such that it could cause a reasonable jury to return a verdict for either party; a fact is material if its resolution affects the

outcome of the case. *Othman v. City of Country Club Hills*, 671 F.3d 672, 675 (8th Cir. 2012).

Disputes that are not genuine or that are about facts that are not material will not preclude summary judgment. *Sitzes v. City of West Memphis, Ark.*, 606 F.3d 461, 465 (8th Cir. 2010).

III. ANALYSIS

The Prison Litigation Reform Act (“PLRA”) requires an inmate to exhaust prison grievance procedures before filing suit in federal court. *See* 42 U.S.C. § 1997e(a); *Jones v. Bock*, 549 U.S. 199, 202 (2007); *Jones v. Norris*, 310 F.3d 610, 612 (8th Cir. 2002) (per curiam). Exhaustion under the PLRA is mandatory. *Jones*, 549 U.S. at 211. “[T]o properly exhaust administrative remedies prisoners must ‘complete the administrative review process in accordance with the applicable procedural rules,’ rules that are defined not by the PLRA, but by the prison grievance process itself.” *Id.* at 218 (quoting *Woodford v. Ngo*, 548 U.S. 81, 88 (2006)). Compliance with a prison’s grievance procedures is, therefore, all that is required by the PLRA to properly exhaust. *Id.* Thus, the question as to whether an inmate has properly exhausted administrative remedies will depend on the specifics of that particular prison’s grievance policy.

See id.

The Craighead County Detention Center had a grievance procedure in place at the time of Plaintiff’s confinement there. (Doc. Nos. 34 at 1, 34-1 at 3.) In accordance with that procedure, a grievance was to be submitted in the form of a written statement on a specified form, “promptly following the incident.” (Doc. No. 34-4 at 2.) Grievants were instructed to “state fully the time, date, names of the jail officer and/or staff members involved, and pertinent details of the incident, including the names of any witnesses.” (*Id.*) A grievance was to be submitted to a housing officer or staff member who would then transmit the grievance within twelve hours to the shift supervisor. (*Id.*) The shift supervisor was to review the grievance to determine whether it constituted a

prohibited or criminal act or a violation of the detainee's civil rights, in which case the jail administrator or his designee would order a prompt investigation. (*Id.*) Following an investigation, a written response to the grievance was to be provided promptly. (*Id.* at 3.) According to the Affidavit of Defendant Bowers, Jail Administrator, detainees submitted grievances through a kiosk communication system at the time Plaintiff was confined there. (Doc. No. 34-1 at 3.)

Defendants contend Plaintiff did not comply with the grievance procedure as to any of the claims raised in his Complaint. (Doc. No. 33 at 3.) In support of this argument, they point to Defendant Bowers's testimony that a review of Plaintiff's jail file did not show any grievances concerning the specific medical issues raised in his Complaint – namely, hepatitis C, a toothache, a broken toe, and “funny” smelling urine. (Doc. No. 34-1 at 3.) But Plaintiff's jail file does include one grievance, apparently submitted on the kiosk communication system, which was clearly medical in nature. (Doc. No. 34-2 at 4.) On February 16, 2017, Plaintiff grieved as follows:

ATTN: Capt. Bowers...[I'M] UNABLE TO MAKE BOND. IN ORDER TO GET THE MEDS I NEED I WOULD NEED TO MAKE BOND[.] I [DON'T] HAVE FAMILY IN THIS STATE, [I'M] IN THE CARE OF THE COUNTRY, AND [IT'S] THE [COUNTRY'S] [RESPONSIBILITY] TO PROVIDE [HEALTH] CARE TO INMATE WHO NEED CARE. [I'M] SICK [I'M] IN PAIN [CAN'T] EVEN FIGHT OFF A HEAD COLD, [I'M] REQUESTING MED[ICAL] CARE THAT I NEED DE[A]RLY[.]

(*Id.*) In response to this grievance, an officer wrote, “Put in Medical Request to be seen[.]” (*Id.*)

Although this grievance did not mention hepatitis C specifically, Plaintiff's medical records show he was requesting treatment for his hepatitis C around the time this grievance was submitted. On February 5, 2017, he complained of shortness of breath and muscle and joint pain and requested “medical treatment asap.” (Doc. No. 34-3 at 14.) He was seen the following day and reported the aches and pains were caused by his hepatitis C. (*Id.* at 15.) He specifically

requested medication to treat the hepatitis C. (*Id.*) Plaintiff alleges in his Complaint Defendants would not provide him medication for his hepatitis C because it was too expensive. (Doc. No. 2 at 4.) On February 14, 2017, two days before Plaintiff filed his grievance, he submitted a request to Defendant Bowers, asking him to authorize the provision of hepatitis C medication. (Doc. No. 34-2 at 2.) Plaintiff asserted the medical department had not adequately resolved the issue and stated he did not have any family that could provide the medication he needed. (*Id.*) Defendant Bowers's response to this request noted the medication Plaintiff wanted was "extremely expensive." (*Id.*)

The medical records also show Plaintiff was requesting treatment for a toothache around this same time. On February 14, 2017, he complained of a lasting toothache and specifically stated "I [DON'T] HAVE FAMILY IN THIS STATE." (Doc. No. 34-3 at 18.) He complained of continuing dental problems on February 17, 2017, stating "THERE IS NO WAY I CAN GET MY FAMILY TO MAKE ANY APPOINTMENT BECAUSE I HAVE NO FAMILY IN THIS STATE . . . [I'M] IN THE CARE OF THE COUNTY I [CAN'T] DO FOR MYSELF [DON'T] HAVE FAMILY HERE IN JONESBORO." (*Id.* at 20.) According to Plaintiff's Complaint, Defendant Black told him his family would have to make arrangements for him to receive dental care. (Doc. No. 2 at 4.)

The record indicates Plaintiff had been requesting medical care in February 2017, for both hepatitis C and a toothache. According to his Complaint, he was not afforded treatment for either ailment, having been told the hepatitis C medication was too expensive and the dental care would have to be arranged by his family. Therefore, his February 16, 2017 grievance, in which he requested medical care and asserted it was the county's responsibility – not his family's – to

provide it, can only be characterized as relating to those issues. Plaintiff should be allowed to proceed with his claims relating to treatment for hepatitis C and a toothache.

To the extent Plaintiff states claims relating to treatment for a broken toe and “funny” smelling urine, Defendants are entitled to summary judgment on those claims. Plaintiff’s medical records show he first complained of a smell in his urine on March 13, 2017, and first complained of a broken toe on March 17, 2017. (Doc. No. 34-3 at 26, 30.) Those problems clearly arose after the filing of the grievance on February 16, 2017, and the record contains no other medical grievances. Thus, as to Plaintiff’s claims regarding treatment for a broken toe and “funny” smelling urine, he failed to “complete the administrative review process in accordance with the applicable procedural rules.” *Jones*, 549 U.S. at 218 (quoting *Woodford*, 548 U.S. at 88).

IV. CONCLUSION

IT IS, THEREFORE, RECOMMENDED that:

1. The Clerk amend the docket to reflect the full and correct names of Defendants Keith Bowers, Arthur Bentley, Kara Black, and Hannah Hogan. (Doc. Nos. 15 at 1, 17 at 1.)

2. Defendants Bentley, Black, Hogan, and Motts’s Motion to Adopt Motion for Summary Judgment (Doc. No. 36) be GRANTED.

3. The Motion for Summary Judgment (Doc. No. 32) be GRANTED IN PART and DENIED IN PART:

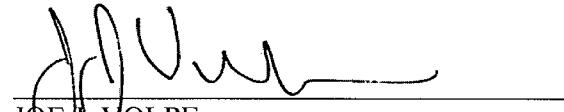
A. Plaintiff’s claims regarding treatment for hepatitis C and a toothache be allowed to proceed.

B. Plaintiff’s claims regarding treatment for a broken toe and “funny” smelling urine be dismissed without prejudice for failure to exhaust administrative remedies.

APP

4. The Court certify, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from an Order adopting these recommendations would not be taken in good faith.

DATED this 14th day of August, 2017.



JOE P. VOLPE
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

PRENTIS RUPERT

PLAINTIFF

v.

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Summary Judgment, stating the Motion also applies to Plaintiff's claims against them. (Doc. No. 36.) Plaintiff has not responded, and these matters are now ripe for a decision. After careful review, and for the following reasons, I find the Motion to Adopt should be GRANTED and the Motion for Summary Judgment should be GRANTED IN PART and DENIED IN PART. Plaintiff's claims regarding treatment for hepatitis C and a toothache should proceed; his claims regarding treatment for a broken toe and "funny" smelling urine should be dismissed.

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administrator or his designee would order a prompt investigation. (*Id.*) Following an investigation, a written response to the grievance was to be provided promptly. (*Id.* at 3.) According to the Affidavit of Defendant Bowers, Jail Administrator, detainees submitted grievances through a kiosk communication system at the time Plaintiff was confined there. (Doc. No. 34-1 at 3.)

Defendants contend Plaintiff did not comply with the grievance procedure as to any of the claims raised in his Complaint. (Doc. No. 33 at 3.) In support of this argument, they point to Defendant Bowers's testimony that a review of Plaintiff's jail file did not show any grievances concerning the specific medical issues raised in his Complaint – namely, hepatitis C, a toothache, a broken toe, and “funny” smelling urine. (Doc. No. 34-1 at 3.) But Plaintiff's jail file does include one grievance, apparently submitted on the kiosk communication system, which was clearly medical in nature. (Doc. No. 34-2 at 4.) On February 16, 2017, Plaintiff grieved as follows:

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would not provide him medication for his hepatitis C because it was too expensive. (Doc. No. 2 at 4.) On February 14, 2017, two days before Plaintiff filed his grievance, he submitted a request to Defendant Bowers, asking him to authorize the provision of hepatitis C medication. (Doc. No. 34-2 at 2.) Plaintiff asserted the medical department had not adequately resolved the issue and stated he did not have any family that could provide the medication he needed. (*Id.*) Defendant Bowers's response to this request noted the medication Plaintiff wanted was "extremely expensive." (*Id.*)

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The record indicates Plaintiff had been requesting medical care in February 2017, for both hepatitis C and a toothache. According to his Complaint, he was not afforded treatment for either ailment, having been told the hepatitis C medication was too expensive and the dental care would have to be arranged by his family. Therefore, his February 16, 2017 grievance, in which he requested medical care and asserted it was the county's responsibility – not his family's – to provide it, can only be characterized as relating to those issues. Plaintiff should be allowed to proceed with his claims relating to treatment for hepatitis C and a toothache.

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IV. CONCLUSION

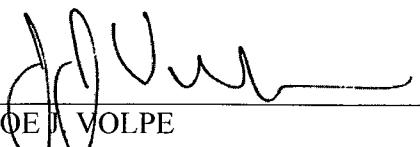
IT IS, THEREFORE, RECOMMENDED that:

1. The Clerk amend the docket to reflect the full and correct names of Defendants Keith Bowers, Arthur Bentley, Kara Black, and Hannah Hogan. (Doc. Nos. 15 at 1, 17 at 1.)
2. Defendants Bentley, Black, Hogan, and Motts’s Motion to Adopt Motion for Summary Judgment (Doc. No. 36) be GRANTED.
3. The Motion for Summary Judgment (Doc. No. 32) be GRANTED IN PART and DENIED IN PART:

- A. Plaintiff’s claims regarding treatment for hepatitis C and a toothache be allowed to proceed.
- B. Plaintiff’s claims regarding treatment for a broken toe and “funny” smelling urine be dismissed without prejudice for failure to exhaust administrative remedies.

4. The Court certify, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from an Order adopting these recommendations would not be taken in good faith.

DATED this 11th day of August, 2017.


JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 18-2720

Prentis Rupert

Appellant

v.

Marty Boyd, Sheriff, Craighead County Sheriff Department

Appeal from U.S. District Court for the Eastern District of Arkansas - Jonesboro
(3:17-cv-00061-DPM)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Shepherd did not participate in the consideration or decision of this matter.

January 31, 2019

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

App. A-21